

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

Ulysses R. Charles,)
Plaintiff,)
)
v.)
)
City of Boston, et al.,)
Defendants.)

CIVIL ACTION
NO. 04-10986-NG

**THE DISTRICT ATTORNEY DEFENDANTS'
MOTION TO DISMISS WITH PREJUDICE**

Defendants John Zanini (“Zanini”) and the Office of the District Attorney for the Suffolk District (the “Suffolk D.A.’s Office”) respectfully request that the Court dismiss them from this lawsuit. Zanini and the Suffolk D.A.’s Office (collectively, the “District Attorney Defendants”) must be dismissed from this suit because (1) Zanini, an assistant district attorney, is entitled to both absolute and qualified immunity; (2) the Eleventh Amendment bars the claims against them; (3) the Suffolk D.A.’s Office is not a “person” within the meaning of 42 U.S.C. § 1983, and thus cannot be sued under that statute; (4) the Complaint fails to state a claim against either Zanini or the Suffolk D.A.’s Office; and (5) the statute of limitations on the plaintiff’s Section 1983 claims expired before he filed his suit. Consequently, both Zanini and the Suffolk D.A.’s Office should be dismissed from this litigation with prejudice. In support of their motion, the District Attorney Defendants rely on the memorandum of law and supplemental appendix submitted in conjunction with this motion.

WHEREFORE, this motion should be allowed and an order should issue dismissing Zanini and the Suffolk D.A.’s Office from this lawsuit with prejudice.

Respectfully submitted,

THOMAS F. REILLY
ATTORNEY GENERAL

/s/ Daniel I. Smulow
Daniel I. Smulow (BBO # 641668)
Assistant Attorney General
Criminal Bureau
One Ashburton Place
Boston, MA 02108
(617) 727-2200, ext. 2949

Dated: October 15, 2004

Certificate of Compliance with Local Rule 7.1(A)(2)

I, Daniel I. Smulow, hereby certify that I telephoned Attorney Kevin O'Connor, counsel for the plaintiff, on October 15, 2004, but was unable to confer with him. In light of the nature of this motion, I presume that Attorney O'Connor and I would have been unable to resolve or narrow the issues.

/s/ Daniel I. Smulow

Certificate of Service

I hereby certify that a true copy of the above document was served by mailing a copy of the same by first-class mail, postage prepaid and addressed to counsel for the plaintiff: Kevin O'Connor, Esq., Paragon Law Group, 184 High Street, Boston, MA 02110. Counsel for the remaining defendants have been served electronically.

/s/ Daniel I. Smulow